

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
vs.) Case No.
WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
EDUCATION, HARRISON COUNTY)
BOARD OF EDUCATION, WEST)
VIRGINIA SECONDARY SCHOOL)
ACTIVITIES COMMISSION, W.)
CLAYTON BURCH in his official)
capacity as State)
Superintendent, DORA STUTLER,)
in her official capacity as)
Harrison County)
Superintendent, and THE STATE)
OF WEST VIRGINIA,)
Defendants.)
And)
LAINEY ARMISTEAD,)
Defendant-Intervenor.)
-----)

REMOTE VIDEOTAPED DEPOSITION OF

DORA STUTLER

AND

DAVE MAZZA

Tuesday, March 8, 2022

Volume I

Reported by:

ALEXIS KAGAY, CSR No. 13795

Job No. 5079542

PAGES 1 - 240

1 Q Did you or anyone at the county board present
2 the county board members with the -- with the bill
3 H.B. 3293?

4 A No.

5 Q Has the board voted in any way relating to 01:05:04
6 policies around H.B. 3293?

7 A No.

8 Q What is the county board's relationship with
9 the Department of Education?

10 A I believe, as the superintendent, I am the 01:05:21
11 conduit from the County Board of Education to my
12 board. So information that comes from the state
13 board is usually a conduit through me to the board,
14 although my board has -- our state boards have their
15 own association that also has a relationship with 01:05:50
16 the state board, and they do have a fall meeting and
17 a winter meeting to update board members. So
18 they -- they have a relationship outside of my
19 relationship with the state board through that
20 organization. 01:06:08

21 Q When you say "they," who are you referring
22 to?

23 A My board members. My five board members are
24 part of a state -- it's just an association. Like I
25 have an association for superintendents, there's an 01:06:23

1 Q Just so I understand, you've said "adopt a
2 policy." What I'm asking is, are there instances
3 where the policy comes directly from the county
4 board?

5 A No. As far as creating the policy, like 01:08:07
6 writing it, the actual making of the policy, I
7 don't --

8 Q No problem. Thank you.

9 If the county board disagrees with a policy
10 that's been presented by the state board, will it 01:08:40
11 still adopt that policy?

12 A We have no choice but to follow state board
13 policy.

14 Q So what is the purpose of having votes as it
15 relates to policies? 01:08:56

16 A They're -- I guess it's -- we adopt state
17 policy. We use the language for state policy. And
18 that is our guidance.

19 If we have a local policy, and it would be
20 something like our local discipline policy, we have 01:09:08
21 an overarching state policy for safe and supportive
22 schools, policy 4373, and it gives you examples of
23 how you would discipline, if this occurs.

24 A local policy would take that policy, adopt
25 all the same language as the state policy, but we 01:09:31

1 A That's been approved by my board, by my
2 five-member board.

3 Q Understood. Is the county board
4 superintendent responsible for monitoring H.B. 3293?

5 MS. DENIKER: Objection to the form. 01:14:04

6 THE WITNESS: That -- there is a current
7 injunction with that rule, so we're...

8 BY MS. REINHARDT:

9 Q Is the county board superintendent
10 responsible for monitoring state policies that are 01:14:30
11 adopted by the county board?

12 MS. DENIKER: Objection to form.

13 THE WITNESS: Would you repeat that question.

14 BY MS. REINHARDT:

15 Q Is the county board superintendent 01:14:41
16 responsible for monitoring policies, let's say state
17 policies, that are adopted by the county board?

18 MS. DENIKER: Same objection.

19 THE WITNESS: Our -- our county board
20 policies are following state board policy. 01:15:01

21 BY MS. REINHARDT:

22 Q And is the county board superintendent
23 responsible for monitoring those?

24 MS. DENIKER: Same objection.

25 THE WITNESS: We enforce the policy as it 01:15:13

1 comes down from the State and our local board
2 because we're required to enforce state policy.

3 BY MS. REINHARDT:

4 Q And how do you enforce it, state policy?

5 A We follow what the rule says. 01:15:40

6 Q Does the rule describe how it should be
7 enforced?

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: Generally, we know how to
10 enforce the rule. And if we had questions about a 01:16:02
11 state board policy, we would contact the state board
12 to make clarification.

13 BY MS. REINHARDT:

14 Q Understood. And what is your relationship
15 with the county board superintendent -- I'm sorry, 01:16:14
16 let -- let me rephrase that.

17 What is your relationship with the state
18 board superintendent?

19 A I contact him when I need to. He's -- he is
20 available, and our state board is available, our 01:16:32
21 state department.

22 Q In what instances would you need to -- in
23 what instances would you need to discuss things with
24 the state board superintendent?

25 A I've had contact with our state board 01:16:49

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1 Q Understood. Does the county board have any
2 policies pertaining to sports?

3 A We have minimal. We have two.

4 Q And what are those two policies?

5 A We have a policy on extracurricular 01:44:45
6 activities for 6 to 12, just defining what
7 extracurricular would be for 6 to 12th grade. And
8 the other policy that we have is on how you obtain a
9 letter, how are you a lettermen, as far as sports is
10 concerned. 01:45:07

11 Q When were those policies developed?

12 A I believe 2008 was one. I don't remember the
13 date on the other. They were early. They're --
14 they're older policies.

15 Q So as it relates to the lettermen policy, 01:45:20
16 I'll use that as an example, who is responsible for
17 enforcing it?

18 A That would be the school AD and the athletic
19 program at the school. That would be really
20 pertaining to the high school athletic directors. 01:45:40

21 Q And does the county board ever need to step
22 in, as far as enforcing those policies?

23 A Only if there would be a disagreement. I
24 would assume that if a child thought they were
25 supposed to get a letter, and they didn't, then I 01:46:00

1 would probably be -- it would be brought to my
2 attention.

3 Q Understood. And just for clarity, does the
4 county board have any policies related to sex
5 separation in sports? 01:46:12

6 A No, we do not have an adopted policy for
7 that. We follow SSAC guidelines on what teams are
8 coed.

9 Q Does the County have any policies pertaining
10 to transgender students? 01:46:40

11 A No.

12 Q What do you know about H.B. 3293?

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It -- it was a state law passed
15 in July of '21. 01:47:05

16 BY MS. REINHARDT:

17 Q What does H.B. 3293 do?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: I can really only tell you what
20 I know when I read the statute. It's a -- it makes 01:47:24

21 a distinction between -- it begins by saying that
22 there is an inherent difference between a male and a
23 female. It talks about safety during sporting
24 activities or doing -- during athletics. And it
25 also addresses the equity or displacement of female 01:47:46

1 Q And once the association made you aware of
2 H.B. 3293, did you report -- did you report anything
3 related to H.B. 3293 to someone you report to?

4 And I can rephrase that if that was not
5 clear. 01:59:29

6 A No.

7 Q Did you discuss H.B. 3293 with anyone who
8 reports to you?

9 A No.

10 Q Was the County Board of Education -- did the 01:59:45
11 County Board of Education have a role in drafting
12 H.B. 3293?

13 A No.

14 Q Did the county board provide any comments or
15 thoughts to the legislature regarding H.B. 3293 that 02:00:01
16 you are aware of as Superintendent Stutler?

17 A Are you speaking about my county-elected
18 board or --

19 Q The County Board of Education, generally.

20 A No. 02:00:22

21 Q How was H.B. 3293 described to you as
22 Superintendent Stutler?

23 MS. DENIKER: Objection to the form.

24 THE WITNESS: I truly just read the
25 administrative updates, and I will tell you that we 02:00:42

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1 Do you see that?

2 A Yes.

3 Q Then on the following page, which is
4 HCBOE 00345, it says, "WV House Bill 3293."

5 Do you see that? 02:04:54

6 A Yes.

7 Q And is it correct that you, as Dora Stutler,
8 were not present for this presentation?

9 A I do not attend all of those association
10 meetings. So I do not recall that particular 02:05:12
11 presentation. These attorneys do present often at
12 these organization meetings.

13 Q After this presentation, did any of the --
14 other superintendents that are members of this
15 associations speak with you about a presentation? 02:05:33

16 A No.

17 Q Has the county board had any conversations
18 with the State Board of Education, prior to the
19 enactment of H.B. 3293, about students who are
20 transgender participating in sports? 02:05:54

21 A No.

22 Q Now, looking at this page, which I believe is
23 345, is that the same page you're currently on?

24 A Yes.

25 Q Can you just review it and let me know if 02:06:07

1 students participating in sports?

2 A There was a gender support plan being created
3 at Norwood Elementary for B.P.J. She was going to
4 attend Bridgeport Middle School.

5 Q So -- 02:10:49

6 A And there's a section -- there's a section on
7 that plan, Are you an athlete?

8 Q Other than the gender support plan that
9 you're speaking of, were there any other
10 conversations with Bridgeport Middle School 02:11:04
11 employees about transgender students
12 participations -- participation in sports?

13 A No.

14 Q Did the county board have any conversations
15 with employees at Norwood Elementary School prior to 02:11:18
16 the enactment of H.B. 3293 about students who are
17 transgender participating in sports?

18 A No.

19 Q What is the county board's rule as it relates
20 to H.B. 3293? 02:11:45

21 MS. DENIKER: Objection to the form.

22 THE WITNESS: It's like any other state law.
23 But there's an injunction, so that was never
24 enacted.

25 BY MS. REINHARDT: 02:11:58

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Q Has H.B. 3293 been enforced against any other student other than B.P.J.? I apologize.

A There's an injunction against it. We take -- we've taken no action. 02:12:17

MS. REINHARDT: Susan, I believe the rest of my questions relate to topic 10, so if it suits the parties, we'll take a break now for about 20 minutes, and then I would ask the county board to have David Mazza present. 02:12:39

MS. DENIKER: And then are done with all other topics upon which Ms. Stutler will be testifying on?

MS. REINHARDT: I am not. MS. DENIKER: Okay. 02:12:51

THE VIDEOGRAPHER: So -- okay. MS. REINHARDT: We can also go off the record.

THE VIDEOGRAPHER: Yeah, let's discuss -- okay. We're -- we're going off the record. The time is 2:13 p.m., and this is the end of Media Unit No. 2. 02:13:00

One moment. (Recess.) THE VIDEOGRAPHER: All right. We are back on 02:53:32

1 THE WITNESS: No. Because we are not
2 operating under House B. -- House Bill 3293.

3 BY MS. REINHARDT:

4 Q Despite the injunction, if one was not put in
5 place, would the process that you've described be 03:09:05
6 the same for H.B. 3293?

7 MS. DENIKER: Object to the form.

8 THE WITNESS: If a student -- if a student
9 athlete is objecting to something, according to SSAC
10 rules, they could follow that process. 03:09:20

11 BY MS. REINHARDT:

12 Q Thank you. Did the county board have any
13 conversations with WVSSAC prior to the enactment of
14 H.B. 3293 about students who are transgender
15 participating in sports? 03:09:40

16 A No.

17 Q Do you know who Bernie Dolan is?

18 A Yes.

19 Q Who is Bernie Dolan?

20 A He's the executive director of the SSAC. 03:09:52

21 Q Did the county board have any conversations
22 with Mr. Dolan, prior to the enactment of H.B. 3293,
23 about students who are transgender participating in
24 sports?

25 A No. 03:10:11

1 questions, I want to see if I can confirm what you
2 previously stated.

3 Can you confirm whether or not the county
4 board had any conversations with anyone outside of
5 the County Board of Education about H.B. 3293 as it 03:16:44
6 relates to students who are transgender
7 participating in school sports?

8 MS. DENIKER: Objection on the basis it's
9 been asked and answered.

10 You can answer. 03:16:59

11 THE WITNESS: I am unaware of any
12 conversations.

13 BY MS. REINHARDT:

14 Q If the preliminary injunction was not in
15 place, what would be required of the county board as 03:17:07
16 it relates to H.B. 3293?

17 MS. DENIKER: Objection to the form.

18 THE WITNESS: We -- we have not acted or
19 changed the way that we would continue with sports
20 in our athletic programs and -- 03:17:39

21 BY MS. REINHARDT:

22 Q And that -- and that's true even if the
23 injunction was not in place?

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: The board has taken no action 03:17:52

1 as it relates to this house bill.

2 BY MS. REINHARDT:

3 Q I'm asking what that'd be required to do.

4 MS. DENIKER: Objection to the form.

5 THE WITNESS: We receive the house bill. 03:18:14

6 It's not enacted. We've made no action on that.

7 And I could not speak on what actions would be

8 taken. We have not had to address that.

9 BY MS. REINHARDT:

10 Q Who will be responsible for promulgating 03:18:36

11 rules to implement H.B. 3293?

12 MS. GREEN: Object to the form.

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It would be the same process we
15 would with any new house bill or rule that we have. 03:18:49

16 BY MS. REINHARDT:

17 Q And that's in line with how you characterized
18 the process earlier in this deposition; is that
19 correct?

20 MS. DENIKER: Objection to the form. 03:19:04

21 THE WITNESS: I believe so.

22 BY MS. REINHARDT:

23 Q I am just trying to not make you reiterate
24 the -- your process for implementing policies, but
25 if you prefer, I am happy to hear that. 03:19:20

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1 A I think I have been asked that. It's a --
2 it's a complicated question. When you're talking
3 about board policies, our board can only enact
4 policies that they vote on and it becomes the
5 policy. We have adopted state board policy, and we 03:19:43
6 will mirror the language of the state board policy.

7 Can the County adopt their own policy? We
8 can. If it's presented to the board, it's acted on,
9 they vote on it.

10 I don't -- I guess I'm not sure what you're 03:20:03
11 asking me.

12 Q That answers my question. Thank you.

13 Could the county board issue any rules in
14 conflict with H.B. 3293?

15 A No. 03:20:26

16 Q To your knowledge, has the county board ever
17 violated any rules promulgated by the State Board of
18 Education?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: Not that I'm aware of. 03:20:43

21 BY MS. REINHARDT:

22 Q Thank you. I'm going to move on to topics as
23 they relate to topic 4.

24 I want to talk a little bit about
25 Plaintiff B.P.J. in this case and her experience in 03:20:59

1 for the fifth-grade year?

2 A Tarra Shields -- in conversation with
3 Tarra Shields, they put this plan into place, her
4 going into fourth grade. And, now, this is from
5 Tarra Shields. There were -- they -- she had a -- 04:08:05
6 I'm talking from Tarra, that she had a good
7 fourth-grade year. They were going -- she was going
8 into the fifth grade, and they felt there was really
9 no need to change anything.

10 At any time, a parent can request that the 04:08:20
11 plan be reviewed. So I would take that if there's
12 not another plan dated, that they felt that, you
13 know, she was having a good two years.

14 Q And who are you referring to when you say
15 "they"? 04:08:35

16 A I -- I would say Tarra Shields, this team
17 that was with her at Norwood. And you've also got
18 to understand the parent is involved in this.
19 And -- and B [REDACTED].

20 Q Did the county board implement any policies 04:08:46
21 related to transgender students after implementing
22 B [REDACTED]'s gender support plan?

23 A No.

24 Q Now I'm going to ask you to go back to what
25 was previously marked as WV-19. 04:09:05

1 THE WITNESS: I think I've said this. When
2 the county board gets a new law, we -- we have to
3 abide by that rule. It was not our rule. And the
4 county board is given those rules; we have to abide
5 by those, period. 04:50:27

6 BY MS. REINHARDT:

7 Q I'm wondering if the county board supported
8 H.B. 3293 when it was being considered by the
9 legislation.

10 MS. DENIKER: Same objection to the form. 04:50:43

11 THE WITNESS: I'm not going to -- I don't
12 know how to really answer that other than we support
13 all of our students in the sense that we need to
14 make them comfortable and aware and -- and support
15 them in their surroundings. 04:50:58

16 BY MS. REINHARDT:

17 Q So you are not aware of any rule prior to
18 H.B. 3293 in West -- where a school in West Virginia
19 had to follow the gender in WVEIS in order for a
20 student to participate on a sports team? 04:51:14

21 MR. TRYON: Objection.

22 MS. GREEN: Object to the form.

23 THE WITNESS: I'm not aware of any other
24 school in West Virginia.

25 ///

1 MS. DENIKER: And I'm going to ask for --
2 this is Susan Deniker again.

3 What is the scope of timing on your question,
4 Ms. Reinhardt?

5 MS. REINHARDT: It will be from January 1st, 04:57:03
6 2019, to present.

7 THE WITNESS: No.

8 BY MS. REINHARDT:

9 Q Thank you. And just as one last final
10 follow-up question, has the county board implemented 04:57:12
11 any Title IX policies pertaining to transgender
12 students' participation in sports?

13 A No.

14 MS. REINHARDT: Thank you very much,
15 Superintendent Stutler. I believe that opposing 04:57:26
16 counsel may have a few questions for you.

17 THE WITNESS: Thank you.

18

19 EXAMINATION

20 BY MS. GREEN: 04:57:34

21 Q Hello, Superintendent Stutler. This is
22 Roberta Green with WVSSAC --

23 MS. GREEN: Kelly, did -- were you guys
24 hopping on to go first? Okay. I'll just leap to
25 the front of the line, then. 04:58:02

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1 Q Do you know how that process is done?

2 A Not from beginning to end. I know parts.

3 Q Is it fair to say that you will defer

4 testimony on behalf of the Harrison County Board of

5 Education about rostering for school sports in 05:54:29

6 Harrison County to the other designee for today's

7 30(b)(6) deposition?

8 A Yes.

9 Q You were also asked questions today about

10 House Bill 3293. 05:54:44

11 Superintendent Stutler, are you familiar with

12 that house bill that was passed by the West Virginia

13 legislature?

14 A Yes.

15 Q And you would have reviewed that bill; is 05:54:55

16 that correct?

17 A Yes.

18 Q You were asked some questions about whether

19 the Harrison County Board of Education supported

20 that bill, and I want to ask you more specific 05:55:03

21 questions about that.

22 Did the Harrison County Board of Education as

23 an entity do anything officially to advocate or

24 support that bill?

25 MS. REINHARDT: Objection to form. 05:55:15

1 THE WITNESS: No.

2 BY MS. DENIKER:

3 Q Did any employee or agent of Harrison County,
4 in their official capacities, take any action to
5 advocate for the passage of that bill? 05:55:25

6 MS. REINHARDT: Objection.

7 THE WITNESS: No.

8 BY MS. DENIKER:

9 Q Did any employee or agent of the
10 Harrison County Board of Education in any way 05:55:34
11 contribute to the passage of that bill by providing
12 testimony or information to support passage of
13 House Bill 3293?

14 MS. REINHARDT: Objection to form.

15 THE WITNESS: No. 05:55:48

16 BY MS. DENIKER:

17 Q Did the Harrison County Board of Education,
18 through the elected board, pass any policy
19 proclamation or other statement that related to
20 House Bill 3293 in any way? 05:56:00

21 A No.

22 Q Has the Harrison County Board of Education
23 taken any action to implement the provisions of
24 House Bill 3293 as you sit here today?

25 A No. 05:56:13

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1 items that only go to certain people.

2 The secretaries have, usually, residency
3 information, scheduling, the schedules, things like
4 that, but some of the stuff that is put in the
5 WVEIS, it's mostly my counselor, myself and my 06:40:03
6 assistant.

7 Q In WVEIS, are students' names listed and
8 other -- so I'm asking, are student names listed,
9 including their ID number?

10 A That is correct. 06:40:16

11 Q And are students' genders listed in WVEIS?

12 A Yes, they are.

13 Q And if a student were to participate in a
14 school athletic program, would the athletic director
15 need to check WVEIS to know which team the student 06:40:39
16 needed to be on?

17 A No.

18 Q How is it -- how are students designated
19 between teams?

20 A They are given an information sheet that is 06:40:48
21 filled out by them or the -- the student or the
22 parent. That information goes back to the athletic
23 director who then puts it in a portal that would be
24 seen by the WVSSAC.

25 Q Does that portal have a name? 06:41:03

1 A It's part of the WVSSAC website where you
2 see -- I'm not sure if you've visited that website,
3 but there's an admin login.

4 Q And is -- is the information the athletic
5 director provides not a part of WVEIS? 06:41:28

6 A It is not part of WVEIS.

7 Q And is that information used to create a
8 roster?

9 A That information is used to create a roster.

10 Q So WVEIS is not used to create a roster; is 06:41:43
11 that correct?

12 MS. DENIKER: Object --

13 THE WITNESS: That is correct.

14 MS. DENIKER: -- to the form.

15 BY MS. REINHARDT: 06:41:51

16 Q And if I'm understanding correctly, the
17 administrative director would list whichever gender
18 is completed by a parent or the athlete in the form
19 you noted earlier; is that correct?

20 A That would be correct. 06:42:10

21 Q And does Bridgeport Middle School have any
22 policies as it relates to gender separation in
23 sports?

24 A We don't have any policies.

25	Q	Is Bridgeport Middle School required to	06:42:32
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1 BY MS. REINHARDT:

2 Q And if a -- if a student is gender
3 nonconforming, does the school have a policy on what
4 would be put as their gender for school sports?

5 A Can you repeat that again, please? 06:47:27

6 Q If a student is gender nonconforming -- and
7 what I mean by that is they neither identify as just
8 a boy or a girl -- does the school have a policy for
9 how they're listed on a sports team's roster?

10 A We do not. 06:47:43

11 Q Does the school have a policy related to what
12 transgender students are listed as for the purposes
13 of sports teams' rosters?

14 A We do not.

15 Q I'm just going to make sure I have -- I've 06:47:59
16 asked all my questions on this topic. One second.

17 Other than school policies, does WVSSAC have
18 any policies that you would follow related to
19 students' genders listed on school sports?

20 MS. GREEN: Object to the form. 06:48:33

21 MS. DENIKER: Object to the form.

22 THE WITNESS: I have never seen any
23 information like that from the SSAC.

24 BY MS. REINHARDT:

25 Q Thank you. And I want to ask if you've ever 06:48:42

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